



March 23, 2017

VIA EMAIL

Freedom of Information Officer
U.S. Environmental Protection Agency Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590
R5foia@epa.gov

Re: FOIA Request re Opacity Violations at Dayton Power & Light Company – J.M. Stuart Generating Station

Dear Records Custodian:

On behalf of the Sierra Club, I am writing to request that the U.S. Environmental Protection Agency (“EPA”) provide copies of the records described below pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the EPA regulations at 40 C.F.R. § 2.100, *et seq.*

The Sierra Club is the nation’s oldest environmental organization. It is dedicated to the protection and preservation of the natural and human environment. The Sierra Club is committed to solving the pressing environmental and health problems associated with the mining, burning and disposal of coal and its combustion by-products.

Documents Requested

Please provide copies of the following records:

All documents that support or underlie EPA’s determination—reflected in the Notice and Finding of Violation, dated February 15, 2017—that Dayton Power & Light Company, as operator of the J.M. Stuart Plant in Aberdeen, Ohio, has violated and continues to violate the Ohio SIP and the Stuart plant’s Title V permit by exceeding 20% opacity for emissions at the Stuart Power Plant, including, without limitation, all documents related to the visible emissions readings taken by EPA on November 10, 2016.

The referenced Notice of Violation/Finding of Violation for the Stuart plant is provided here as Attachment A. To aid your search for responsive documents, I note that Patrick Miller of Region 5 is listed as a contact for this NOV/FOV.

Exempt Records

Should you decide to invoke a FOIA exemption with regard to any of the requested records, please include in your full or partial denial letter sufficient information for the Sierra Club to appeal the denial. To comply with legal requirements, the following information should be included:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions and provide the remainder of the record to the Sierra Club at the address listed below.

Fee Waiver Request

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l). The Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA.

The Sierra Club is a national, nonprofit, environmental organization with no commercial interest in obtaining the requested information. Instead, the Sierra Club intends to use the requested information to inform the public, so the public can meaningfully participate in the dialog concerning pollution generated by the Stuart facility, as well as EPA's investigations related to such pollution.

As explained below, this FOIA request satisfies the factors listed in EPA's governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute—that "disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 40 C.F.R. § 2.107(l).

1. The subject matter of the requested records concerns identifiable "operations and activities of the government."

The activities denoted in this request are "identifiable operations or activities of the government." The Department of Justice Freedom of Information Act Guide expressly concedes that "in most cases records possessed by a federal agency will meet this threshold" of identifiable operations or activities of the government. And, in any event, the requested

documents relate to EPA enforcement of Clean Air Act requirements, which is an activity of the U.S. government.

2. The disclosure of the requested documents has an informative value and will be “likely to contribute to an understanding of Federal government operations or activities.”

The Freedom of Information Act Guide makes it clear that, in the Department of Justice’s view, the “likely to contribute” determination hinges in substantial part on whether the requested documents provide information that is not already in the public domain. The requested records are “likely to contribute” to an understanding of your agency’s operations or activities because they are not otherwise in the public domain and are not accessible other than through a FOIA request. This information will facilitate meaningful public understanding of EPA’s investigation and enforcement process for alleged Clean Air Act violations, therefore fulfilling the requirement that the documents requested be “meaningfully informative” and “likely to contribute” to an understanding of your agency’s enforcement of federal environmental statutes and regulations.

3. The disclosure contributes to the understanding of the public at large.

The Sierra Club and its members have a longstanding interest and expertise in the subject of coal-fired power plants. More importantly, the Sierra Club unquestionably has the “specialized knowledge” and “ability and intention” to disseminate the information requested in a broad manner, and to do so in a manner that contributes to the understanding of the “public-at-large.” The Sierra Club intends to disseminate the information it receives through FOIA regarding these government operations and activities in a variety of ways, including but not limited to, analysis and distribution to the media, distribution through publication and mailing, posting on the Club’s website, emailing, and list-serve distribution to members. Such dissemination will inform the public regarding how EPA goes about investigating and enforcing Clean Air Act requirements.

4. The disclosure contributes “significantly” to public understanding of government operations or activities.

The records requested will contribute “significantly” to the public understanding of the government’s investigatory and enforcement role, and its “operations and activities” associated with the alleged Clean Air Act violations at the Stuart facility. Further, the disclosure of the requested records is essential to public understanding of the potential impacts of emissions from this facility. After disclosure of these records, the public’s understanding of the potential impacts of emissions from this facility will be significantly enhanced.

5. Sierra Club has no commercial interest that would be furthered by the requested disclosure.

The Sierra Club has no commercial interest in the requested records. Nor does it have any intention to use these records in any manner that “furthers a commercial, trade, or profit interest” as those terms are commonly understood. The Sierra Club is a tax-exempt organization

March 23, 2017

Page 4

under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of the Sierra Club's mission to inform the public on matters of vital importance to the environment and public health.

* * *

The Sierra Club respectfully requests, because the public will be the primary beneficiary of this requested information, that EPA waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A). In the event that your agency denies a fee waiver, please send a written explanation for the denial. Also, please continue to produce the records as expeditiously as possible, but in any event no later than the applicable FOIA deadlines.

Record Delivery

In responding to this request, please comply with all relevant deadlines and other obligations set forth in FOIA and the agency's regulations. 5 U.S.C. § 552, (a)(6)(A)(i); 40 C.F.R. § 2.104. Please produce the records above by sending them to me at the address listed below. Please produce them on a rolling basis; at no point should the search for—or deliberation concerning—certain records delay the production of others that the agency has already retrieved and elected to produce.

Thank you for your cooperation. If you find that this request is unclear in any way please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply.

/s/ Tony G. Mendoza

Tony Mendoza

Staff Attorney

Sierra Club Environmental Law Program

2101 Webster Street, Suite 1300

Oakland, CA 94612

(415) 977-5589

tony.mendoza@sierraclub.org

Attachment A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 15 2017

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Amy Feldhaus
Environmental Engineer
DP&L J.M. Stuart Generating Station
P.O. Box 468
Aberdeen, Ohio 45101

Re: Notice and Finding of Violation
Dayton Power & Light Company- J.M. Stuart Generating Station
Aberdeen, Ohio

Dear Ms. Feldhaus:

The U.S. Environmental Protection Agency is issuing the enclosed Notice of Violation and Finding of Violation (NOV/FOV) to The Dayton Power and Light Company (you) under Section 113(a) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a). We find that you have violated the Ohio State Implementation Plan and Title V of the CAA, 42 U.S.C. § 7401 *et seq.*, including the requirements of the Title V operating permit issued to you for the J.M. Stuart Generating Station in Aberdeen, Ohio.

Section 113 of the Clean Air Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order and bringing a judicial civil or criminal action.

We are offering you an opportunity to confer with us about the violations alleged in the NOV/FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the NOV/FOV prior to the conference date. Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Patrick Miller. You may call him at (312) 886-4044 to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,



Edward Nam
Director
Air and Radiation Division

Enclosure

cc: JoAnne C. Rau
Director, Environment and Safety Management
The Dayton Power and Light Company

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency

Cindy Charles, Director
Air Pollution Unit
Portsmouth City Health Department

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**Dayton Power and Light
J.M. Stuart Generating Station
Aberdeen, Ohio**

Proceedings Pursuant to
the Clean Air Act
42 U.S.C. §§ 7401 *et seq.*

)
)
) **NOTICE OF VIOLATION and
FINDING OF VIOLATION**
)
)

EPA-5-17-OH-09

NOTICE OF VIOLATION AND FINDING OF VIOLATION

The Dayton Power and Light Company (DP&L) owns and operates an electric power generating facility, known as the J.M. Stuart Generating Station, located on U.S. Highway 52 in Aberdeen, Ohio (facility or Stuart Station). According to the Title V operating permit for the Stuart Station, DP&L operates, among other things, four coal-fired boilers identified as emission units B001, B002, B003, and B004. Emissions from these boilers are routed through control equipment and then exit through the wet stack.

The U.S. Environmental Protection Agency is sending this Notice of Violation and Finding of Violation to notify DP&L that it is in violation of the visible particulate emission limits at the Stuart Station as specified in the Ohio State Implementation Plan (SIP) and DP&L's Title V operating permit. Violations of these visible particulate emission limits constitute violations of the Clean Air Act (CAA), 42 U.S.C. §§ 7401 *et seq.*

STATUTORY AND REGULATORY BACKGROUND

1. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a plan that provides for the implementation, maintenance, and enforcement of the primary and secondary National Ambient Air Quality Standards in the state. Upon approval by EPA, the plan becomes part of the applicable SIP for the state, and is federally enforceable under Section 113 of the CAA, 42 U.S.C. § 7413.
2. Pursuant to Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), it is unlawful for any person to, among other things, operate a major source subject to Title V except in compliance with a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. *See 57 Fed. Reg. 32295; 40 C.F.R. Part 70.*

Ohio State Implementation Plan – Opacity Regulations

3. EPA approved Ohio Administrative Code (OAC) Chapter 3745-17-07(A)(1) as part of the federally enforceable Ohio SIP effective June 27, 1994. 59 *Fed. Reg.* 27464 (May 27, 1994). EPA approved minor revisions to the rule effective December 27, 2010. 75 *Fed. Reg.* 65567.
4. OAC 3745-17-07(A)(1) of the Ohio SIP requires that “visible particulate emissions from any stack shall not exceed twenty percent opacity, as a six-minute average. [The]... visible particulate emissions from any stack may exceed twenty percent opacity, as a six-minute average, for not more than six consecutive minutes in any sixty minutes, but shall not exceed 60% opacity, as a six-minute average, at any time.”

Title V Requirements

5. EPA fully approved Ohio’s Title V operating permit program effective October 1, 1995. See 40 C.F.R. Part 70, Appendix A; 60 *Fed. Reg.* 42045 (August 15, 1995). The Ohio regulations governing the Title V operating permit program are codified at OAC 3745-77.
6. On March 23, 2016, Ohio Environmental Protection Agency issued a renewal Title V Permit (effective April 13, 2016) to DP&L for operation of the Stuart Station in accordance with OAC 3745-77. Condition C.1.b(1)(a) of the Title V permit specifies that visible particulate emissions from emission units B001, B002, B003, and B004 shall not exceed 20% opacity as a 6-minute average, except as provided by OAC rule 3745-17-07(A).
7. Condition C.1.f(1)(a) of DP&L’s Title V Permit specifies that compliance with the visible particulate emission limitation shall be demonstrated through visible emission observations performed in accordance with the methods and procedures specified in 40 C.F.R. Part 60, Appendix A, Method 9 (EPA Reference Method 9) and OAC 3745-17-03(B)(1).

EXPLANATION OF VIOLATIONS

8. On November 10, 2016, from 11:30 AM to 12:14 PM, a representative of EPA visually determined the opacity of emissions in accordance with EPA Reference Method 9 from the wet stack at DP&L’s Stuart Station. During this time period, the EPA representative observed opacity in excess of 20% as a 6-minute average for more than thirty consecutive minutes. He further noted that the opacity of emissions from the stack in excess of 20% appeared to continue beyond EPA’s Method 9 observation period.
9. Based on the excess opacity observations described in paragraph 8, above, DP&L violated and continues to violate the applicable opacity limits contained in OAC 3745-17-07(A) of the Ohio SIP, and Condition C.1.b(1)(a) of DP&L’s Title V Permit.

ENVIRONMENTAL IMPACT OF VIOLATIONS

10. Violation of opacity standards increases public exposure to particulate matter. Particulate matter, especially fine particulate, contributes to respiratory problems, lung damage and premature deaths.

2/15/12
Date


Edward Nam
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Kathy Jones, certify that I sent a Notice and Finding of Violation, No. EPA-5-17-OH-09, by Certified Mail, Return Receipt Requested, to:

Amy Feldhaus
Environmental Engineer
DP&L J.M. Stuart Generating Station
P.O. Box 468
Aberdeen, Ohio 45101

I also certify that I sent copies of the Notice of Violation and Finding of Violation by first-class mail to:

JoAnne C. Rau
Director, Environment and Safety Management
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, Ohio 45432

Robert Hodanbosi
Chief, Division of Air Pollution Control
Ohio Environmental Protection Agency
1800 WaterMark Drive
Columbus, Ohio 43215

Cindy Charles
Director, Air Pollution Unit
Portsmouth City Health Department
605 Washington Street, Third Floor
Portsmouth, Ohio 45662

On the 16th day of February 2017.



Loretta Shaffer
Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 70091680 0000 7660 7070